

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 104

Introduced by Senator Oropeza

January 27, 2009

An act to amend ~~Section 38505 of, and to add Section 38515 to, Sections 38505 and 38562 of the Health and Safety Code, relating to air pollution.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 104, as amended, Oropeza. California Global Warming Solutions Act of 2006: designation of greenhouse gases.

The

(1) *The* California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt by January 1, 2011, greenhouse gas emission limits and emission reduction measures to achieve the maximum technological feasible and cost-effective greenhouse gas emission reductions.

The act defines greenhouse gases to include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

This bill would also include *in that definition* nitrogen trifluoride, and any other ~~anthropogenic gas one metric ton of which makes the same or greater contribution to global warming as one metric ton of carbon dioxide, as determined by the state board pursuant to a process that the bill would create, including a procedure by which any person~~

~~could petition the state board for a designation. The state board would be required to adopt regulations, including emission limits and emission reduction measures, for a gas determined to be a greenhouse gas no later than _____ years after that gas is gas designated as a greenhouse gas by the United Nations Framework Convention on Climate Change.~~

The bill would also express the intent of the Legislature that the state board take all feasible actions to include in the regulations to be adopted pursuant to the act by January 1, 2011, emission limits and emission reduction measures for nitrogen trifluoride. *The state board would not be required to adopt, by January 1, 2011, emission limits and emission reduction measures for any other gas designated as a greenhouse gas by the United Nations Framework Convention on Climate Change.*

Because a violation of the act is a crime and this bill would expand the scope of the act, this bill would create a state-mandated local program.

The

(2) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature that the State
2 Air Resources Board take all feasible actions to include in the
3 regulations to be adopted pursuant to Section 38562 of the Health
4 and Safety Code by January 1, 2011, emission limits and emission
5 reduction measures for nitrogen trifluoride.

6 SEC. 2. Section 38505 of the Health and Safety Code is
7 amended to read:

8 38505. For the purposes of this division, the following terms
9 have the following meanings:

10 (a) "Allowance" means an authorization to emit, during a
11 specified year, up to one ton of carbon dioxide equivalent.

12 (b) "Alternative compliance mechanism" means an action
13 undertaken by a greenhouse gas emission source that achieves the
14 equivalent reduction of greenhouse gas emissions over the same

1 time period as a direct emission reduction, and that is approved
2 by the state board. “Alternative compliance mechanism” includes,
3 but is not limited to, a flexible compliance schedule, alternative
4 control technology, a process change, or a product substitution.

5 (c) “Carbon dioxide equivalent” means the amount of carbon
6 dioxide by weight that would produce the same global warming
7 impact as a given weight of another greenhouse gas, based on the
8 best available science, including from the Intergovernmental Panel
9 on Climate Change.

10 (d) “Cost-effective” or “cost-effectiveness” means the cost per
11 unit of reduced emissions of greenhouse gases adjusted for its
12 global warming potential.

13 (e) “Direct emission reduction” means a greenhouse gas
14 emission reduction action made by a greenhouse gas emission
15 source at that source.

16 (f) “Emissions reduction measure” means programs, measures,
17 standards, and alternative compliance mechanisms authorized
18 pursuant to this division, applicable to sources or categories of
19 sources, that are designed to reduce emissions of greenhouse gases.

20 (g) “Greenhouse gas” or “greenhouse gases” includes all of the
21 following gases: ~~carbon dioxide, methane, nitrous oxide,~~
22 ~~hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, nitrogen~~
23 ~~trifluoride, and any other anthropogenic gas designated by the state~~
24 ~~board as a greenhouse gas pursuant to Section 38515.~~ *following*
25 *gases:*

26 (1) *Carbon dioxide.*

27 (2) *Methane.*

28 (3) *Nitrous oxide.*

29 (4) *Hydrofluorocarbons.*

30 (5) *Perfluorocarbons.*

31 (6) *Sulfur hexafluoride.*

32 (7) *Nitrogen trifluoride.*

33 (8) *Any other gas designated as a greenhouse gas by the United*
34 *Nations Framework Convention on Climate Change, and any*
35 *amendments and protocols thereto.*

36 (h) “Greenhouse gas emissions limit” means an authorization,
37 during a specified year, to emit up to a level of greenhouse gases
38 specified by the state board, expressed in tons of carbon dioxide
39 equivalents.

(i) “Greenhouse gas emission source” or “source” means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(j) “Leakage” means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(k) “Market-based compliance mechanism” means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

(l) “State board” means the State Air Resources Board.

(m) “Statewide greenhouse gas emissions” means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(n) “Statewide greenhouse gas emissions limit” or “statewide emissions limit” means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38550).

~~SEC. 3. Section 38515 is added to the Health and Safety Code, to read:~~

~~38515. (a) The state board shall designate as a greenhouse gas any anthropogenic gas one metric ton of which makes the same or greater contribution to global warming as one metric ton of carbon dioxide, as determined by the state board.~~

1 ~~(b) (1) Any person may petition the state board to designate as~~
2 ~~a greenhouse gas any anthropogenic gas one metric ton of which~~
3 ~~makes the same or greater contribution to global warming as one~~
4 ~~metric ton of carbon dioxide. Any petition shall include data on~~
5 ~~the gas to support the petition.~~

6 ~~(2) Within one year after the receipt of a petition, the state board~~
7 ~~shall determine the quantity of the gas that makes the same~~
8 ~~contribution to global warming as one metric ton of carbon dioxide~~
9 ~~and shall do the following:~~

10 ~~(A) If the state board determines that one metric ton of the gas~~
11 ~~makes a contribution to global warming that is equal to or greater~~
12 ~~than that made by one metric ton of carbon dioxide, the state board~~
13 ~~shall grant the petition and shall designate the gas as a greenhouse~~
14 ~~gas.~~

15 ~~(B) If the state board determines that one metric ton of the gas~~
16 ~~does not make a contribution to global warming that is equal to or~~
17 ~~greater than that made by one metric ton of carbon dioxide, the~~
18 ~~state board shall deny the petition and shall publish a written~~
19 ~~explanation of the reasons for the state board's decision.~~

20 ~~(3) The state board shall not deny a petition solely on the basis~~
21 ~~of inadequate resources or time for review. If the state board~~
22 ~~determines that information on the gas is not sufficient to make a~~
23 ~~determination, the state board shall use all available means to~~
24 ~~acquire sufficient information.~~

25 ~~(c) The state board shall adopt regulations, including emission~~
26 ~~limits and emission reduction measures, for a gas determined~~
27 ~~pursuant to this section to be a greenhouse gas no later than ____~~
28 ~~years after that gas is designated as a greenhouse gas pursuant to~~
29 ~~this section. The state board shall amend the regulations adopted~~
30 ~~pursuant to Section 38562, if necessary, but the deadline to adopt~~
31 ~~those regulations shall not be extended by the state board.~~

32 ~~(d) The state board shall adopt regulations to implement this~~
33 ~~section by January 1, 2011.~~

34 ~~SEC. 3. Section 38562 of the Health and Safety Code is~~
35 ~~amended to read:~~

36 ~~38562. (a) On~~ *Except as provided in subdivision (g), on or*
37 ~~before January 1, 2011, the state board shall adopt greenhouse gas~~
38 ~~emission limits and emission reduction measures by regulation to~~
39 ~~achieve the maximum technologically feasible and cost-effective~~
40 ~~reductions in greenhouse gas emissions in furtherance of achieving~~

1 the statewide greenhouse gas emissions limit, to become operative
2 beginning on January 1, 2012.

3 (b) In adopting regulations pursuant to this section and Part 5
4 (commencing with Section 38570), to the extent feasible and in
5 furtherance of achieving the statewide greenhouse gas emissions
6 limit, the state board shall do all of the following:

7 (1) Design the regulations, including distribution of emissions
8 allowances where appropriate, in a manner that is equitable, seeks
9 to minimize costs and maximize the total benefits to California,
10 and encourages early action to reduce greenhouse gas emissions.

11 (2) Ensure that activities undertaken to comply with the
12 regulations do not disproportionately impact low-income
13 communities.

14 (3) Ensure that entities that have voluntarily reduced their
15 greenhouse gas emissions prior to the implementation of this
16 section receive appropriate credit for early voluntary reductions.

17 (4) Ensure that activities undertaken pursuant to the regulations
18 complement, and do not interfere with, efforts to achieve and
19 maintain federal and state ambient air quality standards and to
20 reduce toxic air contaminant emissions.

21 (5) Consider cost-effectiveness of these regulations.

22 (6) Consider overall societal benefits, including reductions in
23 other air pollutants, diversification of energy sources, and other
24 benefits to the economy, environment, and public health.

25 (7) Minimize the administrative burden of implementing and
26 complying with these regulations.

27 (8) Minimize leakage.

28 (9) Consider the significance of the contribution of each source
29 or category of sources to statewide emissions of greenhouse gases.

30 (c) In furtherance of achieving the statewide greenhouse gas
31 emissions limit, by January 1, 2011, the state board may adopt a
32 regulation that establishes a system of market-based declining
33 annual aggregate emission limits for sources or categories of
34 sources that emit greenhouse gas emissions, applicable from
35 January 1, 2012, to December 31, 2020, inclusive, that the state
36 board determines will achieve the maximum technologically
37 feasible and cost-effective reductions in greenhouse gas emissions,
38 in the aggregate, from those sources or categories of sources.

1 (d) Any regulation adopted by the state board pursuant to this
2 part or Part 5 (commencing with Section 38570) shall ensure all
3 of the following:

4 (1) The greenhouse gas emission reductions achieved are real,
5 permanent, quantifiable, verifiable, and enforceable by the state
6 board.

7 (2) For regulations pursuant to Part 5 (commencing with Section
8 38570), the reduction is in addition to any greenhouse gas emission
9 reduction otherwise required by law or regulation, and any other
10 greenhouse gas emission reduction that otherwise would occur.

11 (3) If applicable, the greenhouse gas emission reduction occurs
12 over the same time period and is equivalent in amount to any direct
13 emission reduction required pursuant to this division.

14 (e) The state board shall rely upon the best available economic
15 and scientific information and its assessment of existing and
16 projected technological capabilities when adopting the regulations
17 required by this section.

18 (f) The state board shall consult with the Public Utilities
19 Commission in the development of the regulations as they affect
20 electricity and natural gas providers in order to minimize
21 duplicative or inconsistent regulatory requirements.

22 (g) *This section does not require the state board to adopt, by*
23 *January 1, 2011, greenhouse gas emission limits and emission*
24 *reduction measures for any gas described in paragraph (8) of*
25 *subdivision (g) of Section 38505.*

26 ~~(g)~~

27 (h) After January 1, 2011, the state board may revise regulations
28 adopted pursuant to this section and adopt additional regulations
29 to further the provisions of this division.

30 SEC. 4. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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